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Deferiet Paper Company and Local Lodge 1009, District Lodge 65, International Association of Machinists & Aerospace Workers, AFL-CIO and Paper, Allied-Industrial, Chemical and Energy Workers, Locals 45 & 56, AFL-CIO (Party in Interest).
Case 3-CA-21988-1

February 8, 2000

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS FOX AND HURTGEN

Pursuant to charges and amended charges filed on June 23, August 2, and November 18 and 19, 1999, the General Counsel of the National Labor Relations Board issued a complaint on November 19, 1999, alleging that the Respondent has violated Section 8(a)(5), (2), and (1) of the National Labor Relations Act by refusing to bargain with the Union as the exclusive collective-bargaining representative of certain employees, and recognizing Paper, Allied-Industrial, Chemical and Energy Workers, Locals 45 & 56, AFL-CIO (PACE) as the exclusive collective-bargaining representative of those employees, following the Regional Director's decision and order dismissing the Respondent's unit clarification petition in Case 3-UC-455.¹ In Case 3-UC-455, the Respondent sought a finding that the unit of employees represented by the Union (the "IAM unit") was accreted into the unit of employees represented by PACE (the "PACE unit"). (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint.

On December 23, 1999, the General Counsel filed a Motion for Summary Judgment. On December 30, 1999, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

In its answer the Respondent admits its refusal to bargain and its recognition of PACE as the exclusive collective-bargaining representative for the IAM unit employees at issue, but contends that the record in the underlying unit clarification case does not contain sufficient evi-

¹ The Respondent's request for review of the Regional Director's decision and order dismissing the UC petition was denied by the Board in an unpublished order dated November 9, 1999.

dence showing the appropriateness of a separate IAM unit.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a New York corporation, with an office and place of business in Deferiet, New York, has been engaged in the operation of a paper mill.² During the 12 months preceding issuance of the complaint, the Respondent, in conducting its business operations sold and shipped from its Deferiet, New York, facility goods valued in excess of \$50,000, directly to points outside the State of New York. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union and Paper, Allied-Industrial, Chemical and Energy Workers, Locals 45 & 56, AFL-CIO are labor organizations within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Recognition of the Union

On December 14, 1998, Champion, the predecessor employer to the Respondent, and the Union entered into the most recent of successive collective-bargaining agreements, which was effective from December 14, 1998, to December 13, 1999, by which Champion recognized the Union as the exclusive collective-bargaining representative of certain employees employed by Champion described in Section 4.1 of the collective-bargaining agreement (the IAM unit).³ The IAM unit constitutes a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act. The Un-

² On or about June 11, 1999, the Respondent purchased the business of Champion, International (Champion), and since that time has continued to operate the business of Champion in basically unchanged form, at the same location, and has employed as a majority of its employees, individuals who were previously employed by Champion. We find that the Respondent has continued the employing entity and is a successor to Champion.

³ The IAM unit includes maintenance workers in various job classifications, including millwrights, pipefitters (pipers), machinists and shift mechanics. The record in the representation case indicates that the Union has enjoyed a collective-bargaining relationship with predecessor employers of the Respondent, dating from 1937.

ion continues to be the exclusive representative of the IAM unit under Section 9(a) of the Act.

B. Refusal to Bargain

Since June 14, 1999, the Union has requested the Respondent to bargain and, since June 15, 1999, the Respondent has refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

Recognition of Minority Union

On or about June 14, 1999, the Respondent granted recognition to PACE as the exclusive collective-bargaining representative of all its production and maintenance employees, including employees in the IAM unit, and thereafter has engaged in collective bargaining with PACE for employees in the IAM unit, even though PACE does not represent a majority of employees in the IAM unit, and even though the Union is the exclusive collective-bargaining representative of the IAM unit.

CONCLUSIONS OF LAW

By refusing on and after June 15, 1999, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate IAM unit the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees, in violation of Section (8)(a)(5) and (1) of the Act. By granting recognition to PACE as the exclusive collective-bargaining representative of the employees in the IAM unit and thereafter engaging in collective bargaining with PACE for employees in the IAM unit, when PACE does not represent a majority of employees in that unit, the Respondent has been rendering unlawful assistance and support to a labor organization, in violation of Section 8(a)(2) and (1) of the Act. These unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union and, if an understanding is reached, to embody the understanding in a signed agreement.

Having found that the Respondent has violated Section 8(a)(2) and (1) of the Act, we shall order it to cease and desist recognizing and bargaining with PACE and to withdraw and withhold recognition from PACE as the exclusive collective-bargaining representative of the IAM unit.

ORDER

The National Labor Relations Board orders that the Respondent, Deferiet Paper Company, Deferiet, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

- (a) Refusing to bargain with Local Lodge 1009, District Lodge 65, International Association of Machinists & Aerospace Workers, AFL-CIO as the exclusive bargaining representative of the employees in the IAM bargaining unit, as set forth in the 1998-1999 collective-bargaining agreement between the Union and the predecessor employer.

- (b) Recognizing and bargaining with Paper, Allied-Industrial, Chemical and Energy Workers, Locals 45 & 56, AFL-CIO as the exclusive collective-bargaining representative of employees in the IAM unit, unless and until PACE has been certified by the National Labor Relations Board as the exclusive bargaining representative of the unit.

- (c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

- (a) On request, bargain with the Union as the exclusive representative of the employees in the appropriate IAM unit, as set forth in the 1998-1999 collective-bargaining agreement between the Union and the predecessor employer, on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.

- (b) Withdraw and withhold recognition from Paper, Allied-Industrial, Chemical and Energy Workers, Locals 45 & 56, AFL-CIO as the exclusive collective-bargaining representative of the employees in the IAM unit, unless and until PACE has been certified by the NLRB as the exclusive bargaining representative by the unit.

- (c) Within 14 days after service by the Region, post at its facility in Deferiet, New York, copies of the attached notice marked "Appendix."⁴ Copies of the notice, on forms provided by the Regional Director for Region 3 after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since June 15, 1999.

⁴ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. February 8, 2000

John C. Truesdale,	Chairman
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Sarah M. Fox,	Member
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Peter J. Hurtgen,	Member
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(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with Local Lodge 1009, District Lodge 65, International Association of Machinists & Aerospace Workers, AFL-CIO as the exclusive representative of the employees in the IAM bargaining unit, as set forth in the 1998-1999 collective-bargaining agreement between the Union and the predecessor employer.

WE WILL NOT recognize and bargain with Paper, Allied-Industrial, Chemical and Energy Workers, Locals 45 & 56, AFL-CIO as the exclusive collective-bargaining representative of employees in the IAM unit, unless and until PACE has been certified by the National Labor Relations Board as the exclusive bargaining representative of the unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the IAM bargaining unit.

WE WILL withdraw and withhold recognition from Paper, Allied-Industrial, Chemical and Energy Workers, Locals 45 & 56, AFL-CIO as the exclusive collective-bargaining representative of the IAM unit.

DEFEREIT PAPER COMPANY